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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,478	10/20/2003	Daniel S. Papenfuss	20717	7892

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BEMIS COMPANY, INC.
Patent and Trademark Department
2200 BADGER AVENUE
OSHKOSH, WI 54904

EXAMINER	
PATTERSON, MARC A	
ART UNIT	**PAPER NUMBER**
1794	
MAIL DATE	**DELIVERY MODE**
11/13/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/689,478	PAPENFUSS ET AL.	
	Examiner	Art Unit	
	MARC A. PATTERSON	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 July 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-67* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-67* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

NEW REJECTIONS

Claim Rejections – 35 USC § 103(a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1 - 13 and 17 - 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andersen et al (U.S. Patent No. 5,660,903) in view of Notomi et al (U.S. Patent No. 3,985,849).

With regard to Claim 1, Andersen et al disclose a laminate (column 4, lines 44 - 47), therefore adhered by adhesive lamination, comprising layers of film (sheets; column 4, lines 44 - 47) for packaging, which are flexible (column 13, lines 45 - 60), therefore having an internal surface and external surface; comprising a polymer (column 7, lines 9 - 11), comprising polyvinyl alcohol (column 24, lines 31 – 39) comprising a surface - roughened portion, therefore on an external surface or score lines for the purpose of bending the film (column 13, lines 31 - 45); the film.is laminated to at least one layer of polyamide (column 81, lines 54 - 61); Andersen et al therefore disclose five layers of the film, each film alternately laminated with four layers of polyamide; the laminate therefore comprises a first film layer comprising a first polymer having a surface roughened portion on its external surface, a second film layer comprising adhesive positioned between the second film layer and third film layer which is a polyamide, and therefore a barrier layer, and is positioned between the second film layer and fourth film layer, and a

fourth film layer having a second polymer. Anderson et al fail to disclose a polymer that is biaxially oriented.

Notomi et al disclose the biaxial orientation of a sheet of polyvinyl alcohol (polyvinyl alcohol film; column 1, lines 5 – 12) for the purpose of obtaining polyvinyl alcohol having improved impact resistance compared to a sheet that is not biaxially oriented (column 12, lines 46 – 54).

It therefore would have been obvious for one of ordinary skill in the art to have provided for the biaxial orientation of the sheet of Anderson et al in order to obtain a film having improved impact resistance as taught by Notomi et al.

Andersen et al also fail to disclose a surface - roughened portion and score line intersecting at least at one axis drawn between the first film layer and fourth film layer when the film is in a lay fiat condition. However, as stated above, Andersen et al disclose the score lines for bending the film. Therefore, one of ordinary skill in the art would have recognized the utility of varying the position of the score line to obtain the desired bending. Therefore, the bending would be readily determined by through routine optimization of the position of the score line by one having ordinary skill in the art depending on the desired use of the end product as taught by Andersen et al. It therefore would be obvious for one of ordinary skill in the art to vary the position of the score line, and therefore the degree of intersection, in order to obtain the desired bending, since the bending would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Andersen et al.

With regard to Claims 2 - 3, Andersen et al discloses no shrinkage; the claimed aspect of 0% shrinkage at 85 degrees Celsius in the machine and transverse directions therefore reads on Gehrke et al.

With regard to Claim 4, as discussed above, the film disclosed by Andersen et al is adhered by adhesive lamination, and therefore comprises a fifth film layer positioned between the third film layer and fourth film layer which comprises an adhesive.

With regard to Claim 5, Andersen et al disclose a multilayer film having a fourth layer having a score line as discussed above. Andersen et al fails to disclose a score line having a depth of 50 - 95% of the thickness of the layer. However, Andersen et al teaches the score line for folding, as stated above, and therefore teaches the selection of the depth to obtain desired folding.

With regard to Claims 6 - 7, Andersen comprises score lines, as stated above, therefore continuous and non - continuous.

With regard to Claim 8, the claimed aspect of the score line being made by optical ablation is directed to a method limitation and is therefore given little patentable weight.

With regard to Claim 9, Andersen et al disclose a polymer comprising polyamide, as stated above, and therefore disclose a biaxially oriented polymer comprising polyamide.

With regard to Claims 12 - 13, the barrier material disclosed by Andersen et al is a polyamide, which is identical to the claimed barrier material, and therefore has an oxygen transmission rate of 0.01 - 1.00 cm3/100 in2 and the claimed vapor transmission rate.

With regard to Claim 17, Andersen et al discloses an adhesive that is a cold - seal adhesive, because a laminate is disclosed, therefore adhered to any surface of the layers.

With regard to Claims 18 - 19, the layers disclosed by Andersen et al have internal and external surfaces as discussed above.

With regard to Claim 20, the film disclosed by Andersen et al has a thickness of 0.75 3.5 mils (column 41, lines 60 - 65).

With regard to Claim 21, the film disclosed by Andersen et al is oriented as discussed above, and is bent and therefore has an easy opening tear feature and therefore forms a package comprising a tear initiation area and a directional tear zone; the fdm is sealable (column 56, lines 9 - 14) and therefore Andersen et al therefore disclose a packaging having a top first edge seal portion and an opposite bottom second edge seal portion in parallel with the top first edge seal portion and a third seal portion disposed perpendicular between the top first seal edge portion and bottom second seal edge portion and parallel to a folded side and at least one first folded side edge superimposed on the surface roughened portion on an extemal surface of the first film layer of the package.

With regard to Claims 22 - 23, Andersen et al disclose a cold - seal as discussed above, and therefore disclose a top first seal edge portion and bottom second seal edge portion comprising a cold - seal adhesive.

3. Claims 14 - 16 and 24 - 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andersen et al (U.S. Patent No. 5,660,903) in view of Notomi et al (U.S. Patent No. 3,985,849) and further in view of Gehrke (U.S. Patent No. 5,783,266).

Andersen et al and Notomi et al disclose a multilayer film having a barrier layer comprising polyamide as discussed above. With regard to Claims 14, 24 - 35, 38 - 52, 54 - 59

and 61 - 67, Andersen et al and Notomi et al fail to disclose a barrier layer comprising a metallic coating on the external surface of the fourth film layer having a thickness from 200 - 700 Angstroms.

Gehrke teaches that a metallic coating (thin layer of metal formed by deposition; column 3, lines 27 - 32) is used interchangeably with polyamide (nylon; column 3, lines 27 - 32) as a barrier layer in a film (column 3, lines 27 - 32) for the purpose of obtaining a film that is a barrier to oxygen and moisture (column 3, lines 32 - 35). One of ordinary skill in the art would therefore have recognized the advantage of providing for the metallic coating of Gehrke in Andersen et al and Notomi et al, which comprises a multilayer film, depending on the desired barrier to oxygen and moisture of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a metallic coating on the external surface of the layers in Andersen et al and Notomi et al in order to obtain a film that is a barrier to oxygen and moisture as taught by Gehrke.

Gehrke fails to disclose a metallic coating having a thickness from 200 - 700 Angstroms. However, Gehrke teaches the selection of the coating depending on the desired strength (column 7, lines 53 - 60). Therefore, one of ordinary skill in the art would have recognized the utility of varying the thickness to obtain the desired strength. Therefore, the strength would be readily determined by through routine optimization of the thickness by one having ordinary skill in the art depending on the desired use of the end product as taught by Gehrke. It therefore would be obvious for one of ordinary skill in the art to vary the thickness in order to obtain the desired

strength, since the strength would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Gehrke.

With regard to Claims 15 – 16, 36 – 37, 53 and 60, Gehrke teaches a metal layer comprising aluminum, which is a metal (column 4, line 65).

ANSWERS TO APPLICANT'S ARGUMENTS

4. Applicant's arguments regarding the 35 U.S.C. 103(a) rejection of Claims 1 – 13 and 17 – 23 as being unpatentable over Andersen et al (U.S. Patent No. 5,660,903) in view of Notomi et al (U.S. Patent No. 3,985,849) and 35 U.S.C. 103(a) rejection of Claims 14 - 16 and 24 – 67 as being unpatentable over Andersen et al (U.S. Patent No. 5,660,903) in view of Notomi et al (U.S. Patent No. 3,985,849) and further in view of Gehrke (U.S. Patent No. 5,783,266), of record in the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues on page 3 of the remarks dated July 25, 2008, that Andersen et al fails to disclose a laminate having one layer having a roughened portion and a second layer having a score line.

However, because Andersen et al discloses a roughened portion and / or score line, and discloses multiple layers, it would have been obvious for one of ordinary skill in the art to provide for one layer having a roughened portion and a second layer having a score line

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marc A Patterson/
Primary Examiner, Art Unit 1794

Application Number	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/689,478	PAPENFUSS ET AL.	
	Examiner	Art Unit	
	MARC A. PATTERSON	1794	